

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION**

TOTAL REBUILD, INC.,)
) **Civil Action No. 6:15-cv-01855-RFD-CBW**
Plaintiff/Counter-Defendant,)
) **JUDGE DOHERTY**
vs.)
) **MAGISTRATE JUDGE WHITEHURST**
PHC FLUID POWER, L.L.C.,)
) **JURY TRIAL DEMANDED**
Defendant/Counter-Plaintiff.)
)

JOINT CLAIM CONSTRUCTION AND PREHEARING STATEMENT

Plaintiff Total Rebuild, Inc. (“Total”) and Defendant PHC Fluid Power, L.L.C. (“PHC”), pursuant to Patent Rule 4-3, submit the following Joint Claim Construction and Prehearing Statement relating to U.S. Patent No. 8,146,428 (the “428 Patent”) and show the Court as follows.

(a) Terms on Which the Parties Agree.

Following a meet and confer telephone conference, the parties were able to reach an agreement regarding the meanings of the following terms from the '428 Patent:

Term	Meaning Agreed to by the Parties
“control panel located remote from said housing”	a device, positioned outside of or exterior to the housing for operating the high-pressure testing equipment
“said sensor coupled to said bleed valve”	a sensor in communication with the bleed valve for actuation of the bleed valve
“activate said bleed valve to prevent pressure buildup”	actuation of the bleed valve to prevent pressure buildup in the high-pressure testing equipment when door is open

“portable housing”	a housing that is movable or transportable to different testing sites
“Bleed valve coupled to said high-pressure pneumatics testing equipment”	a valve joined or linked to testing equipment to prevent pressure buildup in testing equipment when the closable access opening is not closed
“Sensor for sensing that said access opening is closed”	a switch capable of sensing input regarding whether the door is open or closed

(b) Proposed Constructions

Total does not believe it is necessary to conduct a *Markman* hearing in the present case as the meaning of the elements of the ‘428 Patent are simple to understand in their ordinary meaning as understood by those of ordinary skill in the art and as defined by the ‘428 Patent specification, thus do not require a drawn out claim construction hearing. Total asserts that none of the claim elements require construction because the terms are understandable to a person of ordinary skill in the art, as well as a lay person. However, to the extent that construction is required, Total proposes the following constructions for the terms disputed by PHC.

Exhibit A sets forth Total’s proposed construction of each disputed claim term of the ‘428 Patent and all references from the specification or prosecution history and an identification of any extrinsic evidence known to Total on which Total intends to rely either to support its proposed construction of the claim or to oppose PHC’s proposed construction of the claim. PHC objects to Plaintiff’s Exhibit A to the extent the “Support” column contains more than “references from the specification or prosecution history that support that construction” or “an identification of any extrinsic evidence known to the party on which it intends to rely.” See Patent Rule 4-3(b).

Exhibit B sets forth PHC’s proposed construction of each disputed claim term of the ‘428 Patent and all references from the specification or prosecution history and an identification of

any extrinsic evidence known to PHC on which PHC intends to rely either to support its proposed construction of the claim or to oppose Total's proposed construction of the claim. Total objects to PHC's Exhibit B to the extent the "Support" column contains more than "references from the specification or prosecution history that support that construction" or "an identification of any extrinsic evidence known to the party on which it intends to rely." See Patent Rule 4-3(b).

(c) Claim Construction Hearing Length

The parties believe that the Claim Construction Hearing on the '428 Patent can be conducted in one day.

(d) Witnesses, Including Experts, for the Claim Construction Hearing

At this time, Total at least intends to call:

1. Terry Lavergne, the Director of Total Rebuild, Inc. and the sole inventor of the '428 Patent, a person of ordinary skill in the art as a witness at the Claim Construction Hearing. Mr. Lavergne's proposed testimony includes, without limitation, the meaning of the proposed claim terms as understood by those of ordinary skill in the art of the '428 Patent, the scope of any prior art cited by PHC, and rebuttal expert to any expert witness listed by the Defendant.

2. Andy Boyke, Superintendent at Total Rebuild, Inc., a fact and expert witness at the Claim Construction Hearing. Mr. Boyke's proposed testimony includes, without limitation, the plain and ordinary meaning of the proposed claim terms as understood by those of ordinary skill in the art of the '428 Patent, the scope of any prior art cited by PHC, and rebuttal expert to any expert witness listed by the Defendant.

3. Kevin Dorsey, Shop Foreman at Total Rebuild, Inc., a fact and expert witness at the Claim Construction Hearing. Mr. Dorsey's proposed testimony includes, without limitation, the plain and ordinary meaning of the proposed claim terms as understood by those of ordinary skill in

the art of the '428 Patent, the scope of any prior art cited by PHC, and rebuttal expert to any expert witness listed by the Defendant.

At this time, PHC may call, at least, the following witnesses:

1. Mark Mire, Co-owner of PHC, as a fact witness at the claim construction hearing. Mr. Mires' proposed testimony will include, without limitation, at least, the plain and ordinary meaning of the proposed claim terms as understood by those of ordinary skill in the art; the scope of the prior art produced by any of the parties in this case; and the indefiniteness of certain claims and terms related thereto of the '428 Patent.

2. Bret Adams, Co-owner of PHC, as a fact witness at the claim construction hearing. Mr. Adams' proposed testimony will include, without limitation, at least, the plain and ordinary meaning of the proposed claim terms as understood by those of ordinary skill in the art; the scope of the prior art produced by any of the parties in this case; and the indefiniteness of certain claims and terms related thereto of the '428 Patent.

3. Ron Hyziewics, an employee of PHC and a person of ordinary skill in the relevant field of art, as a fact and expert witness at the claim construction hearing. Mr. Hyziewicz's proposed testimony will include, without limitation, at least, the plain and ordinary meaning of the proposed claim terms as understood by those of ordinary skill in the art; the scope of the prior art produced by any of the parties in this case; and the indefiniteness of certain claims and terms related thereto of the '428 Patent.

(e) Prehearing Conferences Prior to the Claim Construction Hearing

At this time, Total believes that a prehearing conference is necessary to address whether a Claim Construction Hearing is necessary as it is Total's contention that the terms and phrases involved are well understood in their plain meaning to a person of ordinary skill in the art, as well

as a lay person and thus do not require construction. PHC does not believe a prehearing conference is required.

Dated: November 21, 2016

Respectfully submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Warner Joseph Delaune
Warner Joseph Delaune (LA Bar No. 20780)
450 Laurel Street, 20th Floor
Baton Rouge, Louisiana 70801
Telephone: (225) 381-7032
Fax: (225) 382-0232
wdeleane@bakerdonelson.com

Samuel F. Miller (TN BPR No. 22936)
(Admitted Pro Hac Vice)
211 Commerce Street, Suite 800
Nashville, Tennessee 37201
Telephone: (615) 726-5594
Fax: (615) 744-5594
smiller@bakerdonelson.com

Nicholas L. Vescovo (TN BPR No. 30387)
(Admitted Pro Hac Vice)
165 Madison Avenue
Memphis, TN 38103
Telephone: (901) 577-8103
nvescovo@bakerdonelson.com

Nicholas R. Valenti (TN BPR No. 35420)
(Admitted Pro Hac Vice)
211 Commerce Street, Suite 800
Nashville, Tennessee 37201
Telephone: (615) 726-7309
Fax: (615) 744-7309
nvalenti@bakerdonelson.com

Attorneys for Defendant PHC Fluid Power, L.L.C.

/s/ Chase A. Manuel (by Warner Joseph Delaune
with permission)

Steven G. Durio – 05230

William W. Stagg – 1613

Chase A. Manuel – 35223

Durio, McGoffin, Stagg & Ackermann

220 Heymann Boulevard

P.O. Box 51308

Lafayette, Louisiana 70503

337-233-0300 – Telephone

337-233-0694 – Fax

Attorneys for Plaintiff Total Rebuild, Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this, the 21st day of November, 2016, a copy of the foregoing document was served on counsel of record listed below, via the Court's CM/ECF system:

Steven G. Durio

William W. Stagg

Chase A. Manuel

Durio, McGoffin, Stagg & Ackermann, PC

220 Heymann Boulevard (70503)

Post Office Box 51308

Lafayette, LA 70505-1308

s/ Warner Joseph Delaune

Warner Joseph Delaune

EXHIBIT A – Total Rebuild, Inc.’s ‘428 Patent Preliminary Claim Construction

Term	Location in Claims	Proposed Construction	Support
explosion-proof safety housing	1, 7, 8, 11, 14, 16	a case or enclosure to cover and protect a structure or a mechanical device able to withstand and confine shock pressure, pressure blasts, flying fragments or debris, and energy resulting from combustion.	<p>“Housing” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 - “A case or enclosure to cover and protect a structure or a mechanical device”.</p> <p>“shock from a pressure blast and flying fragments and debris...energy released to create such overpressures may result from combustion, or may be due to the release of elastic energy stored in a compressible fluid.” ‘428 Patent at Col. 1, Lines 36-51.</p> <p>“withstand the impact of high velocity projectile/high-speed flying fragments resulting from explosion of pressure equipments” ‘428 Patent at Col. 2, Lines 53-55.</p> <p>“housing 11 may also be able to withstand and confine shock wave or shock pressure radiated by explosions resulting from the use of a gas as the pressure medium in high-pressure testing or is fluids is used as the pressure medium in high-pressure testing, the flashing or geysering of a compressed fluid to a vapor state resulting from the compressed fluid rapidly passing through an orifice wherein elastic energy is then converted to heat.” ‘428 Patent at Col. 2, Lines 56-64; Fig. 1.</p>

closeable access opening in said housing	1, 3, 4, 11, 16, 18	A door in the housing which may be opened and closed for inserting a high-pressure device for testing	“Safety system 10 also includes a closeable access opening comprising a door 19 in bunker housing 11 for inserting a high-pressure device for testing within bunker housing 11.” ‘428 Patent at Col. 3, Lines 4-7; Fig. 1.
means within said housing for coupling said high-pressure pneumatics testing equipment to said high-pressure device for testing	1, 11	Governed by §112(6) means-plus-function term encompassing pressure containing hoses, fittings, pressure containing fittings, manifold fittings, pump fittings, and any equivalents thereto.	<p>“a majority if not all associated pumps, plumbing, hoses, and bleed valves are to also be located entirely within chamber 12.” ‘428 Patent at Col. 3, Lines 36-38.</p> <p>“Located entirely within chamber 12 is at least one high-pressure pneumatics testing equipment and means 12a for coupling the high-pressure pneumatics testing equipment to a high-pressure device for testing.” ‘428 Patent at Col. 3, Lines 1-4; Fig. 1.</p> <p>“Coupling” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 - “[ENG] to connect with a coupling, such as of two belts or two pipes.”</p> <p>“Pipe” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 - “A tube made of metal, clay, plastic, wood, or concrete and used to conduct a fluid, gas, or finely divided solid.”</p> <p>It is well known in the field of the art that the means for coupling between and to high-pressure pneumatics includes the use of hoses, fittings, manifolds, and their equivalents in order to facilitate containment and passage of pressurized fluid or gas there between.</p>

<p>means linking said high-pressure pneumatics testing equipment to said control panel</p> <p>OR</p> <p>coupling said control panel to the testing equipment inside said housing</p>	<p>1, 2, 9, 11, 12, 16</p>	<p>Governed by §112(6)</p> <p>means-plus-function term encompassing electronic cables, data cables, audio/video cables, digital and/or analog cables, power cables, pressure containing hoses and tubing, sensors, cameras, and any equivalents thereto.</p>	<p>Safety system 10 also includes a control panel 16 located outside of the chamber 12 of bunker housing 11 and means linking the high-pressure pneumatics testing equipment to the control panel 16 for operating the high-pressure pneumatics testing equipment within bunker housing 11 from control panel 16. In general the means linking the high-pressure pneumatics testing equipment to control panel 16 includes not only means for monitoring but also recording the operation of the high-pressure pneumatics testing equipment. ‘428 Patent at Col. 3, Lines 26-34; Fig. 1-4.</p> <p>“the control panel 16 of safety system 10 comprising a pump on/off switch 34, an air regulator 35, an air drive pressure gauge 36, a ball valve 37, and a filter 38. Pump on/off switch 34 functions by sending a pneumatic signal to the corresponding high-pressure equipment testing device to either turn on or off the particular device. Pump on/off switch 34 is shown in fluid communication with air regulator 35, which includes an adjustable resistor 39 to allow the user to control or set the amount fluid flow that is directed into control panel 16.” ‘428 Patent at Col. 5, Lines 5-14; Fig. 4.</p> <p>“a majority if not all associated pumps, plumbing, hoses, and bleed valves are to also be located entirely within chamber 12.” ‘428 Patent at Col. 3, Lines 36-38.</p>
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			<p>“[C]ontrol panel 16 is shown also including means for monitoring and recording the operation of the high-pressure pneumatics testing equipment comprising a chart recorder.” ‘428 Patent at Col. 5, Lines 26-29.</p> <p>“Chart Recorder” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 – “A recorder in which a dependent variable is plotted against an independent variable by an ink-filled pen moving on plain paper, a heated stylus on heat-sensitive paper, a light beam or electron beam on photosensitive paper.”</p> <p>“may be linked to the control panel 16 by a variety of means, the embodiment of FIG. 1 shows the control panel 16 linked to the low-pressure pump 13, intermediate-pressure pump 14, high-pressure pump 47, and the bleed valve 15 by a $\frac{1}{8}$" 60,000 psi rate cone and reinforced thread tubing 17[.]” ‘428 Patent at Col. 4, Lines 5-11; Fig. 1.</p> <p>It is well known in the field of the art that “control panels” include such devices as computers, recorders, monitors, and the like and that a means for coupling or linking between a device being controlled, monitored, and recorded to such control panel, including the means for monitoring and recording, includes the use of electronic cables, data cables, audio/video cables, digital and/or analog cables, power cables, and their equivalents to facilitate such control and monitoring.</p>
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means for monitoring and recording	2, 12, 17	<p>Governed by §112(6)</p> <p>means-plus-function term encompassing chart recorders, monitors, screens, gauges, computers, data recording instruments, and any equivalents thereto.</p>	<p>“the control panel 16 of safety system 10 comprising a pump on/off switch 34, an air regulator 35, an air drive pressure gauge 36, a ball valve 37, and a filter 38. Pump on/off switch 34 functions by sending a pneumatic signal to the corresponding high-pressure equipment testing device to either turn on or off the particular device. Pump on/off switch 34 is shown in fluid communication with air regulator 35, which includes an adjustable resistor 39 to allow the user to control or set the amount fluid flow that is directed into control panel 16.” ‘428 Patent at Col. 5, Lines 5-14; Fig. 4.</p> <p>“[C]ontrol panel 16 is shown also including means for monitoring and recording the operation of the high-pressure pneumatics testing equipment comprising a chart recorder.” ‘428 Patent at Col. 5, Lines 26-29.</p> <p>“Chart Recorder” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 – “A recorder in which a dependent variable is plotted against an independent variable by an ink-filled pen moving on plain paper, a heated stylus on heat-sensitive paper, a light beam or electron beam on photosensitive paper.”</p> <p>“Monitor” - Dictionary of Engineering, McGraw-Hill, 2nd ed. © 2002 – “An instrument used to measure continuously or at intervals a condition that must be kept within prescribed limits, such as...a variable quantity in an automatic process control system...”</p>
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			It is well known in the field of the art that “control panels”, including the means for monitoring and recording, include such devices as computers, recorders, monitors, screens, and equivalents thereof in order to allow for visualization and recordation of test results.
stationary housing	7	The housing substantially fixed in place or position	<p>“Stationary” - Merriam-Webster’s 11th Collegiate Dictionary © 2003 by Merriam-Webster, Inc. – “not moving: staying in one place or position”.</p> <p>“Safety system 10 includes a stationary explosion-proof safety housing comprising a bunker housing 11 having a chamber 12 therein.” ‘428 Patent at Col. 2, Lines 49-51.</p>

EXHIBIT B - PHC Fluid Power, L.L.C. '428 Patent Preliminary Claim Construction

Term	Location in Claims	Proposed Construction	Support
explosion-proof safety housing	1, 7, 8, 11, 14, 16	stationary bunker or portable housing with an enclosed space or cavity	<p>"...bunker housing 11 having a chamber 12 therein" - 2:51-67</p> <p>"...unlike the bunker housing 11 of safety system 10, which comprises a stationary enclosure, the testing housing 45 of portable safety system 40 comprises a smaller portable enclosure or housing that may be moved to different testing sites." - 5:43-47</p> <p>"chamber" - Merriam-Webster, 2: "a natural or artificial enclosed space or cavity"</p> <p>"...most if not all associated pumps, plumbing, hoses, and bleed valves located entirely within chamber 44 of a testing housing 45." - 5:37-39</p> <p>Fig. 1 - see chamber 12 as volume within housing 11</p> <p>Fig. 5 - see chamber 44 as volume within housing 45</p>

closeable access opening in said housing	1, 3, 4, 11, 16, 18	a closeable walk-in door to the stationary bunker for entry by operators, or a small closeable door on the portable test housing	<p>“...comprising a door 19 in bunker housing 11 for inserting a high-pressure device for testing within bunker housing 11.” - 3:5-7</p> <p>“When safety enter switch 20 senses that door 19 is closed, housing door 19 is locked with a device such as an air cylinder so that no user/personnel can enter chamber 12.” - 3:55-57</p> <p>Closeable access opening is not numbered in Fig. 5 for portable test housing, but must exist for operation. See what appears to be a “handle” on right side of test housing 45.</p>
means within said housing for coupling said high-pressure pneumatics testing equipment to said high-pressure device for testing	1, 11	<p>Governed by §112(6)</p> <p>“means for coupling” not supported in the specification; no corresponding structure is defined or clearly indicated in the figures</p>	<p>“Located entirely within chamber 12 is at least one high-pressure pneumatics testing equipment and means 12a for coupling the high-pressure pneumatics testing equipment to a high-pressure device for testing.” 3:1-4</p> <p>Fig. 1 simply shows a nondescript box as item 12a.</p> <p>“couple” - Merriam Webster, 3: “something that joins or links two things together”</p>

<p>means linking said high-pressure pneumatics testing equipment to said control panel</p> <p>OR</p> <p>coupling said control panel to the testing equipment inside said housing</p>	<p>1, 2, 9, 11, 12, 16</p>	<p>Governed by §112(6)</p> <p>tubing capable of communicating pressure from the control panel to the testing equipment</p>	<p>“...means linking the high-pressure pneumatics testing equipment to the control panel 16 for operating the high-pressure pneumatics testing equipment within bunker housing 11 from control panel 16.” - 3:27-31</p> <p>“Although the low-pressure pump 13, intermediate-pressure pump 14, high-pressure pump 48, and the bleed valve 15 may be linked to the control panel 16 by a variety of means, the embodiment of FIG. 1 shows the control panel 16 linked to the low-pressure pump 13, intermediate-pressure pump 14, high-pressure pump 47, and the bleed valve 15 by a 1/8" 60,000 psi rate cone and reinforced thread tubing 17 with a 4 to 1 safety factor. Tubing 17 runs from the chamber 12 through a small opening 18 on bunker housing 11 to the control panel 16 and may also be reinforce by a steel piping.” - 4:5-15</p> <p>See Figure 1 for tubing 17</p> <p>Prior statements by Total that are inconsistent with Total’s proposed construction that may be used to oppose Total’s proposed construction:</p> <p>“means-plus-function term encompassing electronic cables, data cables, audio/video cables, digital and/or analog cables, power cables, pressure containing hoses and tubing, and any equivalents thereto.”</p> <p><i>Total Rebuild, Inc. v. Streamline Hose & Fittings Inc.</i>, 6:15-cv-01172, (W.D.La. Filed April 9, 2015): Exh. A - Total Rebuild, Inc.’s ’428 Patent Preliminary Claim Construction, Dkt. 62-1, p. 4; and Plaintiff’s Claim Construction Brief, Dkt. 65, p. 19.</p>
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			<p>“The operation of the control panel 16 to turn on and off the testing equipment as well as allow for input of pressure is well known to require tubing and pressure containing hoses to facilitate the passage of pneumatic pressures and other such electronic cables and power cables which would allow for turning the pneumatics testing equipment on and off. Further, such incorporated ‘means linking’ or ‘coupling’ for a control panel 16 for monitoring and recording are well known to include such analog/digital cables, data cables, audio/video cables, electronic and power cables capable of facilitating and allowing for the operation and function of chart recording and pressure gauge devices.”</p> <p><i>Streamline Action</i>, Plaintiff’s Claim Construction Brief, Dkt. 65, p. 22</p> <p>“Whether the ‘control panel’ has physical control switches, resistors, valves, etc. or their digital computation equivalent means of controlling the testing equipment, they perform the claimed function of operating the high-pressure testing equipment in substantially the same way of setting limits and sending signals from and to the high-pressure testing equipment through cables, hoses, tubing, and other equivalent structural ‘means linking’ or ‘coupling’ means to achieve substantially the same result of facilitating the high-pressure test.”</p> <p><i>Streamline Action</i>, Plaintiff’s Reply Claim Construction Brief, Dkt. 69-2, p. 13.</p>
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			<p>“they perform the claimed function of monitoring and recording the operation of the high-pressure testing equipment in substantially the same way of receiving data and signals from the testing equipment through the cables, hoses, tubing, and equivalent structural ‘means linking’ or ‘coupling’ means to achieve substantially the same result of allowing for the monitoring and recording of the test.”</p> <p><i>Streamline Action</i>, Plaintiff’s Reply Claim Construction Brief, Dkt. 69-2, p. 14.</p>
means for monitoring and recording	2, 12, 17	<p>Governed by §112(6)</p> <p>Gauges and chart recorders connected to the control panel</p>	<p>“In general the means linking the high-pressure pneumatics testing equipment to control panel 16 includes not only means for monitoring but also recording the operation of the high-pressure pneumatics testing equipment.” - 3:31-34</p> <p>“In the embodiment of FIG. 4, control panel 16 is shown also including means for monitoring and recording the operation of the high-pressure pneumatics testing equipment comprising a chart recorder.” - 5:26-29</p> <p>See Fig. 4, gauge 36.</p>

stationary housing	7	Relatively non-movable bunker intended for movement of personnel into and out of bunker chamber	<p>“Safety system 10 includes a stationary explosion-proof safety housing comprising a bunker housing 11 having a chamber 12 therein.” 2:49-51</p> <p>“When safety enter switch 20 senses that door 19 is closed, housing door 19 is locked with a device such as an air cylinder so that no user/personnel can enter chamber 12.” - 3:55-57</p>
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